ORIGINAL

PROPOSED STIPULATION AND ORDER

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

APR 16 2001

FILED
01 APR 24 PM 1:45
LANCE S. WILSON
CLERK
BY ____ DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

John C. CARPENTER, individually and as Agent for the Citizens United for South Canyon Road; O. Q. JOHNSON, individually; Grant GERBER, individually; and ELKO COUNTY, Nevada, a political subdivision of the STATE of NEVADA.

Defendants.

No. CV-N-99-00547-DWH (RAM)

STIPULATION AND ORDER

It is hereby STIPULATED by and between Plaintiff, UNITED STATES OF AMERICA, by and through the United States Attorney for the District of Nevada, and Defendants, John C. CARPENTER and ELKO COUNTY, Nevada, a political subdivision of the State of Nevada, by and through the Chairperson of the Elko County Commission (the foregoing referred to individually as "Party" or collectively as "Parties"), as follows:

1. The Parties have entered into a Settlement Agreement, a true and correct executed copy of which is attached hereto at Exhibit 1. The Settlement Agreement is incorporated by reference as though fully set forth herein.

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2. The Settlement Agreement creates certain continuing rights in and obligations of the Parties. To give effect to these continuing rights and obligations, the Parties agree to the following.

DISMISSAL OF CLAIMS AGAINST JOHN CARPENTER

3. In order to avoid the uncertainty and expense of litigation, and in consideration of the promises and obligations contained within the Settlement Agreement, the United States agrees to release and dismiss with prejudice its claims against John Carpenter and John Carpenter agrees to release the United States from any civil claims he might have in connection with the United States' allegations and claims against him.

DISMISSAL AND RELEASE OF CLAIMS BY AND AGAINST ELKO COUNTY

4. The United States and Elko County agree to dismiss with prejudice and release their respective claims as follows:

a. In July 1998, Elko County used earthmoving equipment to begin the process of reopening the South Canyon Road in and around the area known as the South Canyon Road near Jarbidge, Nevada ("Activities").

b. Elko County engaged in the Activities without the benefit of obtaining permits from the United States and its agencies authorizing the Activities.

c. The United States believes and claims that the Activities alleged above support causes of action against Elko County for common law trespass and violations of the federal Clean Water Act. It further believes and claims that its causes of action entitle the United States to money damages, a penalty and an injunction against Elko County.

d. In response to the Activities described above, the United States commissioned a private contractor to do certain work in the same area in November and December, 1998. The United States contends that the work was necessary to restore the area in accordance with federal rules and federal law.

e. Elko County counterclaims that it owns an R.S. 2477 right of way on the South Canyon Road and maintains that it properly engaged in the Activities within the scope of an R.S. 2477 right of way and within its sovereign powers to protect the general public. Elko County contends that the United States' actions described paragraph (d), above, improperly interfered with its RS 2477 right of way.

f. In order to avoid the uncertainty and expense of litigation, and in consideration of the promises and obligations contained within the Settlement Agreement, the United States agrees to dismiss with prejudice and release its claims against Elko County for common law trespass and violations of the federal Clean Water Act arising from the Activities of July 1998, and Elko County agrees to dismiss with prejudice its counterclaim against the United States and to release the United States from any civil claims it might have in connection with the actions taken by the United States as outlined in paragraph (d), above.

EFFECT OF DISMISSAL AND RELEASE

5. Nothing in this Stipulation constitutes an admission by any Party, or waives or discharges any claims or defenses of any party except for those expressly addressed herein and in the attached Settlement Agreement.

6. Nothing in this Stipulation affects in any way any claims or causes of action the United States, Elko County or John Carpenter has or may have arising out of the terms and conditions of the Settlement Agreement, including a claim for breach of the Settlement Agreement. The Parties expressly reserve the right to enforce the terms and conditions of the Settlement Agreement.

7. Nothing in this Stipulation constitutes an agreement by the United States concerning the characterization of the amounts paid or contributed by Elko County

under the Settlement Agreement for purposes of any proceeding under Title 26 of the Internal Revenue Code.

NO THIRD-PARTY RIGHTS CREATED

8. Nothing contained in this Stipulation is intended to create any substantive, procedural, or other rights in any person, group, or individual not a party to this Stipulation.

CONTINUING JURISDICTION

9. The Parties agree to the continuing jurisdiction of this Court over this Action for all purposes, including the entry, from time to time, of such Orders by this

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Court in furtherance of its jurisdiction or to enforce the Parties' rights and obligations under the terms and conditions of the Settlement Agreement and this Stipulation.

IT IS SO AGREED:

John C. CARPENTER
Defendant

Dated: April 09, 01

ELKO COUNTY
By and Through:

Nolan Lloyd
Chairperson, Elko County Commission

Dated: 4-9-01

Attest:
Carol Iorno, Deputy
Karen Dredge
Elko County Clerk

Dated: 4-9-01

UNITED STATES OF AMERICA

KATHRYN E. LANDRETH
United States Attorney

By:

IT IS SO ORDERED:

United States District Judge

Dated: 4/23/01

COPY

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") has been entered into by and among Defendants John Carpenter; County of Elko, Nevada, a political subdivision of the State of Nevada, acting by and through its Board of Commissioners ("Elko County"); and the State of Nevada, acting by and through its Division of Environmental Protection ("State"); and the United States of America, acting through the United States Forest Service ("FS"), United States Fish & Wildlife Service ("USF&WS") and the Environmental Protection Agency ("EPA"), such agencies and the United States being collectively referred to as "United States." The foregoing are sometimes referred to collectively as the "Parties" and individually as a "Party." Elko County, the State and the United States are sometimes referred to as the "Governmental Parties."

RECITALS

The Parties are involved in a dispute regarding a road referred to as the Jarbidge South Canyon Road (hereinafter "South Canyon Road") located in Elko County, Nevada. In 1995, a high water event in the adjacent Jarbidge River washed out portions of the road. Since that time, a series of actions and disputes have intervened to preclude the restoration of the road. For example, in 1999, the Bull Trout -- which exists in the Jarbidge watershed -- was listed in five distinct population segments as a threatened species under the Endangered Species Act ("ESA"), 15 U.S.C. § 1531, *et seq*. Elko County, the State and John Carpenter dispute the factual and legal basis for the listing.

Elko County desires to reestablish the road to provide emergency medical and fire protection, as well as public access to the wilderness trail head. It contends that it has the authority to do so by virtue of its claimed ownership interest in the road under 43 U.S.C. § 932, repealed, 14 Stat. 251, 253 (1866), codified at Rev. Stat. § 2477 (1873) ("R.S. 2477"), and as an emergency. Elko County and John Carpenter contend that Elko County may repair and maintain an R.S. 2477 right of way without federal approval. The United States contends that the road is located on federal land managed by the FS and that, regardless of who owns the road, it may only be restored after compliance with federal laws and regulations, including the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4321, *et seq*., ESA and the Clean Water Act ("CWA"), 33 U.S.C.§ 1251, *et seq*.

In 1999, Elko County was joined in a lawsuit over the road filed by the United States against John Carpenter, O. Q. "Chris" Johnson, and Grant Gerber and captioned as *United States v. Carpenter*, *et al*., CV-N-00-00547-DWH (RAM) ("the Action") in the United States District Court for the District of Nevada ("Federal District Court"). The Federal District Court in that case ordered all Parties, including Elko County, to mediation.

Elko County has provided the United States with substantial historical documentation showing the pattern of human use and development in and around the area of the Jarbidge Mountains prior to the time the public lands in question were withdrawn for national forest purposes.

Rather than continuing to litigate, the Parties have agreed to resolve the Action under the terms and conditions of this Agreement.

EXHIBIT 1

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions contained in this Agreement, the Parties agree as follows:

I. NO ADMISSIONS

Each Party understands, acknowledges and agrees that the negotiation, execution, and performance of this Agreement shall not constitute, or be construed as, an admission of any liability or wrongdoing by any Party, nor shall the terms hereof have any value as legal precedent in any other case.

It is not the intent of this agreement to alter or modify the rights of the parties under law except as expressly provided herein. If the South Canyon Road is reestablished pursuant to the terms of this Agreement, and all other obligations of the parties created by this Agreement have been performed, the rights and obligations of the parties shall be no different from those existing in all other cases in which a political subdivision of a state owns an R.S. 2477 right of way crossing National Forest System lands.

II. RIGHT OF WAY

The United States will not now or in the future contest that Elko County has an R.S. 2477 right of way for a road running generally from Pavlak Grade to the Snowslide Gulch Trail head. This road is commonly referred to as the South Canyon Road. The location, extent and width of the right of way are described generally in Exhibit A. The description provided in Exhibit A will be superseded by a more specific description based on a survey completed by the FS as soon after the execution of this Agreement as snow and weather conditions allow. Elko County agrees to participate in the survey of the right of way. Nothing in this Section II shall be construed to limit the United States' authority to manage federally owned land or natural resources in accordance with federal laws, including the NEPA, the National Forest Management Act ("NFMA"), 16 U.S.C. § 1600, *et seq.*, the ESA, the CWA, etc.

III. WORK ON THE SOUTH CANYON ROAD

A. Authorization Agreement. Elko County and John Carpenter agree that current law pertaining to the national forests requires the County to obtain FS authorization prior to reconstructing or authorizing any other party to reconstruct any portion of the South Canyon Road on National Forest System lands between Pine Creek Campground and the Snowslide Gulch Trail head.

Elko County and John Carpenter shall refrain from doing any work on the South Canyon Road from Pine Creek Campground to the Snowslide Gulch Trail head, or authorizing the same, before receiving authorization from the FS. Elko County shall perform any work authorized in accordance with the terms and conditions provided in any authorization. If the South Canyon Road is reestablished, Elko County shall repair and maintain the road, seeking such authorization from the FS as would be necessary under applicable laws for conducting repair and maintenance on any other R.S. 2477 right of way located on National Forest System lands.

Upon execution of this Agreement, Elko County may perform work at its own expense, including but not limited to, reconstruction, repair or maintenance, on that portion of the South Canyon Road located between the Pavlak Grade and the Pine Creek Campground. Elko County shall perform any such work in compliance with best management practices, the terms of this Agreement and in compliance with federal and state law.

Further, the Parties will use their best efforts to prevent any third party from doing any work on any portion of the South Canyon Road unless that third party has received authorization from both Elko County and the United States. The term "best efforts" does not limit the discretion of Elko County or the United States to enforce its laws, regulations or ordinances.

B. Interim Work on the South Canyon Road. Certain work may be needed on that portion of the South Canyon Road located south of the Pine Creek Campground before the FS makes its decision on Elko County's proposal(s), as described in Section III.C., below. In particular, the FS and Elko County anticipate the need for work in the area around the first washout to prevent erosion and to prevent silt from entering the West Fork of the Jarbidge River. Elko County and the United States agree to work together to address needed work. Elko County shall receive credit for any costs it incurs in planning or participating in such work against its obligations described in Section V. B. Any dispute between Elko County and the United States on whether and what work should be done shall be resolved in accordance with Section IX of this Agreement.

C. Submission and Review of Elko County's Proposal. Elko County intends to submit a proposal to the FS to reestablish the South Canyon Road south of the Pine Creek Campground. Elko County believes that such proposal will be best termed plans for repair or maintenance of the South Canyon Road and that authorization for such work would not require NEPA analysis or implicate the CWA, ESA or other federal law. The United States contends that it may not authorize any work on the South Canyon Road without analysis under NEPA and a determination that such work will comply with applicable federal law.

If the FS determines that the proposal submitted by Elko County must be analyzed under NEPA, or that it implicates the ESA, CWA or other federal law, then neither Elko County nor John Carpenter will contest that determination through either administrative or judicial review. In addition, if the FS determines that Elko County's plans and actions implicate the ESA, CWA or other federal law, Elko County agrees to submit any needed permit applications and to comply with those federal laws. If the United States determines that NEPA does not apply and that no other federal law is implicated, Elko County may implement its proposal in accordance with applicable laws.

Elko County may submit plans to perform work on only part of the South Canyon Road between Pine Creek Campground and the Snowslide Gulch Trail head. If it does so, the scope of the proposal, including whether it is reasonably foreseeable that Elko County will ultimately seek to perform work on the entire South Canyon Road south of the Pine Creek Campground, will be evaluated under applicable federal law.

In analyzing any application submitted by Elko County, the FS will fully evaluate any alternative proposed by Elko County as well as any other reasonable alternative as required by NEPA. If the FS determines that it must analyze the submitted plans(s) under NEPA, the FS agrees to give Elko County cooperating agency status in accordance with the regulations implementing NEPA. The FS agrees to work cooperatively with Elko County in analyzing its plans and reasonable alternatives, and to complete any NEPA analysis and required consultations as expeditiously as possible under applicable federal law.

D. Cost of NEPA and Other Analysis. The FS shall complete and bear the costs of conducting any NEPA analysis and any other analyses required by Federal law to make a decision on Elko County's application and plans regarding the South Canyon Road between Pine Creek Campground and the Snowslide Gulch Trail head. If the FS determines that Elko County's application and plans must be analyzed under the NEPA or that they implicate other federal laws, Elko County will provide, at its own expense, necessary information, including but not limited to environmental information and engineering designs, for the FS to comply with NEPA or with other federal law. Elko County may utilize in-house contractors or volunteers to provide such information. The FS may, but is not required to, use a third party to assist in the NEPA analysis and any other process required by federal law.

E. Relocation of Right of Way. Should compliance with NEPA, the CWA, the ESA or other federal law require that the South Canyon Road be moved from its present location in order for the work to be completed, Elko County shall not object thereto solely on the grounds that the road must remain in its present location because it exists within an R.S. 2477 right of way. If the road is relocated, the United States will not contest that the location of any new route is part of the South Canyon Road R.S. 2477 right of way belonging to Elko County, provided that Elko County will abandon the former route as an R.S. 2477 right of way once the new portion is completed. Any such relocation of the R.S. 2477 right of way will be surveyed at Elko County's expense and described in similar detail to the description of the right of way prepared under Section II above, and public records will be noted appropriately to reflect the abandonment and description of the R.S. 2477 right of way. Any relocated R.S. 2477 right of way will be subject to the terms and conditions of this Agreement.

F. Reservation of Rights and Defenses. The Parties reserve all rights and defenses except as expressly limited in this Agreement. In the event that Elko County initiates proceedings seeking compensation for a taking of the R.S. 2477 right of way described in Section II and Exhibit A of this Agreement, Elko County's recovery shall be limited to 50% of any compensation awarded. Should the United States initiate condemnation proceedings, this limitation on takings liability shall not apply. Nothing contained herein shall be construed to require Elko County to commence a takings claim or to prohibit Elko County from submitting plans for reopening the road more than once.

IV. RESPONSIBILITY FOR COST OF WORK ON THE SOUTH CANYON ROAD

Elko County will be solely responsible for the cost of reconstructing, repairing and maintaining the South Canyon Road between Pine Creek Campground and the Snowslide Gulch Trail head, including the costs of any environmental restoration or mitigation work deemed necessary to comply with federal law. The United States has no obligation under this Agreement to contribute to the cost of any work on the South Canyon Road. If, in order to comply with federal law, Elko County must implement measures beyond those proposed in its plans, the FS will use its best efforts to assist Elko County to obtain federal funding for such improvements from other federal sources such as the Federal Highway Administration to the extent allowed by federal law.

V. SETTLEMENT AND COMPROMISE OF CIVIL CLAIMS

Basis Of Claims. In July 1998, an Elko County road crew began work to reestablish a portion of the South Canyon Road south of the Pine Creek Campground. The United States contends, among other things, that these actions resulted in a trespass and a violation of the CWA. Elko County contends, among other things, that it had authority to undertake these actions and denies that it trespassed or violated the CWA. In response to the road work initiated by Elko County, the United States contracted to perform work that it contends was necessary for protection of the quality of the Jarbidge River and protection of the Bull Trout. Elko County contends the actions of the United States interfered with its right of way. In order to settle these claims, the Parties have agreed as follows:

A. Water Projects. Elko County agrees to contribute the sum of fifty thousand dollars ($50,000) to perform a project or projects to benefit the waters and watershed in the Jarbidge area ("Water Projects"). That sum may be contributed through the provision of in-kind services or by cash payments. Elko County's obligation to contribute to Water Projects in this Section V.A. is separate and apart from its obligation to contribute to work conducted on the road north of Jarbidge, Nevada, described in Section V.B.

1. Potential Water Projects. To meet this contribution requirement, Elko County will implement one or more of the Water Projects from the list below, after approval pursuant to subsection V.A.2, below. Elko County certifies that it is not required by law to do any of the following Water Projects and that it is not planning to do any of the Water Projects except as stated in this paragraph.

a. Watershed/Water Quality Improvement -- Improve the watershed and water quality in the West Fork of the Jarbidge River by: remediating watershed problems related to historical and current uses; and, evaluating and remediating disposal methods that have a negative impact on water quality;

b. River Improvement - Pine Creek To Jarbidge: Improve the environment downstream from the Pine Creek Campground to Jarbidge, Nevada, by, among other things: stabilizing the road and stream banks consistent with stream hydrology; increasing habitat complexity; planting trees and shrubs to increase shading and maintain water temperature, including monitoring to ensure successful re-vegetation; removing trash and debris; controlling noxious weeds; and, evaluating the possibility of establishing a recreational vehicle sewage disposal site outside of the canyon area.

c. River Improvement - Gorge Gulch to the Headwaters of the West Fork of the Jarbidge River: improve the environment and water quality by planting trees and shrubs; removing trash; and, evaluating and implementing methods to increase duration of snow pack.

d. Removal of Barriers Along Jack Creek and the West Fork of the Jarbidge River -- Improve stream flow in Jack Creek and the West Fork of the Jarbidge River by identifying and removing or modifying barriers consistent with stream hydrology.

2. **Water Project Approval.** Upon execution of this Agreement, the FS intends within 180 days to submit to the EPA specific and detailed plans for the Water Project(s) described generally above. These plans shall include a time table for completion of the Water Project(s), cost estimates, and a detailed description of the proposed Water Project(s), including drawings, blueprints, or other documentation showing the details of the project. If after FS submits the detailed plans, EPA requires additional information, or changes to the project, the FS will provide the additional information or make the changes or both within thirty days after EPA's request. Implementation of any Water Project will not begin until after the EPA reviews and approves FS's plans. Further, implementation of any Water Project will not begin until after the project is authorized under other applicable laws including NEPA, ESA and CWA.

Elko County agrees to participate in the formulation and revision of plans for any Water Projects. In addition, Elko County agrees to submit any applications needed to perform any Water Projects.

Elko County shall implement the approved Clean Water Project(s) and during implementation of any Water Projects, Elko County shall provide to EPA quarterly progress reports and shall submit a final report once work is completed. The final report will describe the work completed and provide a detailed cost accounting. The EPA and Elko County will complete their obligations regarding this project in good faith, and the EPA agrees that it will not unreasonably withhold its approval of Water Project plans.

3. **Payment In Lieu Of Project Construction.** The aggregate value of the Water Projects will be calculated using actual construction costs, including equipment, labor, and material costs. Elko County may implement any Water Projects using its own resources or may contract with a third party to implement the Water Projects. Elko County will provide to the EPA copies of invoices, contracts, and any other documents to show the amounts expended to implement any Water Projects. In the event Elko County does not complete any Water Projects within two field seasons after approval of Water Project Plans, or completes by the end of that period Water Projects having less aggregate value than $50,000, Elko County shall pay any remaining balance of its $50,000 contribution to the United States within sixty days thereafter by mailing or delivering that amount to the United States Attorney's Office for the District of Nevada, 333 Las Vegas Blvd., South, Suite 5000, Las Vegas, Nevada 89101, or such other address as the United States may direct.

Nothing in this Section V.A. shall prevent the EPA from granting Elko County additional time to complete any Water Project.

B. Road Plan and Maintenance Project. Additionally, Elko County agrees that it will expend the sum of one hundred fifty thousand dollars ($150,000) in cash or in-kind services to develop and implement a plan in conjunction with the FS, the USF&WS, the United States Department of the Interior, Bureau of Land Management, and the Nevada Division of Wildlife to improve the road north of Jarbidge to the Idaho border to protect and enhance the environment of the Jarbidge River. Implementation of any plan will not begin until after the plan is approved under applicable federal laws, including NEPA, ESA and CWA.

The Parties agree that Elko County will provide to the United States sufficient documentation to support the value of any in-kind services, which in-kind services will include costs of planning, equipment, labor and materials necessary for the agreed upon improvements. Thereafter, Elko County agrees to perform maintenance on the road in accordance with the approved plan. The Parties acknowledge that institution and completion of such work is constrained by the County budgeting process. In the case of expenditures for road work, Elko County prioritizes anticipated road projects in the following categories. Those which are to be undertaken the following year, the next year and those to be undertaken between three and ten years. Elko County agrees to place the road maintenance project herein contemplated within the three to ten year plan. Completion of the project will therefore be carried out expeditiously without a specific time period for completion being established. However, Elko County agrees to make its cash or in-kind contributions no later than five years from the date this Agreement is executed. The Parties agree to complete their obligations in good faith.

Elko County will submit its documentation of cash payments or in-kind work for its Road Plan and Maintenance Agreement to the District Ranger for the Jarbidge District in the FS office in Elko, Nevada. If after five years Elko County has not made cash contributions or performed in-kind services worth $150,000, any remaining balance shall be paid to United States within sixty days thereafter by mailing or delivering that amount to the United States Attorney's Office for the District of Nevada, 333 Las Vegas Blvd., South, Suite 5000, Las Vegas, Nevada 89101, or such other address as the United States may direct.

Nothing in this Section V.B. shall prevent the FS from granting Elko County additional time to complete the Road Plan and Maintenance Project.

C. Future Cooperation and Road Dispute Resolution. Prior to closing or decommissioning any road or trail on National Forest System lands within Elko County, the FS will consult with Elko County to determine if Elko County asserts or claims a right of way for such road or trail.

Elko County will have the Elko County Road Supervisor attend the FS-Elko County Monthly meetings to discuss any work planned on roads or trails on National Forest System lands within Elko County. Before beginning any road or trail work not discussed at the monthly meetings, Elko County and the FS agree to notify each other of the proposed work or closures. Where work on road or trails or closures is necessary for emergency protection of life, property or natural resources, Elko County and the FS will notify each other about the emergency as soon as possible.

If Elko County and the FS disagree about any of the above activities discussed at the monthly meetings or outside the monthly meetings, they shall attempt to resolve those disagreements informally. In the event that they are unable to do so, any disputes will be resolved through appropriate legal processes and not through self help. Emergency actions as described in this Section V.C. do not constitute self help in violation of this Agreement. This Section V.C. does not prevent any party from disputing or challenging any emergency action through appropriate legal processes.

Nothing in this Section V.C. modifies Elko County's or the FS's rights, responsibilities and obligations under any existing or future cooperative road and/or bridge agreements.

VI. RELEASE OF CLAIMS AND DISMISSAL OF THE ACTION

A. **Dismissal of Claims against John Carpenter.** As described in the Stipulation and Order, Exhibit B, and in consideration of the promises and obligations contained in this Agreement, the United States agrees to release and dismiss with prejudice its claims against John Carpenter, and John Carpenter agrees to release the United States from any claims he has or may have in connection with the Action.

B. **Dismissal and Release of Elko County's and United States' Claims.** As described in the attached Stipulation and Order, Exhibit B, and in consideration of the promises and obligations contained in this Agreement, the United States agrees to dismiss with prejudice and release its claims against Elko County for common law trespass and violations of the CWA arising from the activities to reopen the South Canyon Road in July 1998, and Elko County agrees to dismiss with prejudice its counterclaim against the United States and to release the United States from any civil claims it has or might have in connection with the actions taken by the United States in November and December 1998 on the South Canyon Road.

C. **Stipulation and Order.** Upon execution of this Agreement, the Parties upon whom the Agreement is binding agree to execute, file and cause to be entered by the Federal District Court, a Stipulation and Order substantially in the form contained at Exhibit B.

VII. COSTS AND FEES

Except as to the costs paid to the mediator, and consistent with the other provisions of the Agreement, each Party agrees to bear and pay such Party's own costs, attorneys' fees, and consultants' and experts' fees, if any, incurred in connection with the Action, the Mediation, and the negotiation of this Agreement and all claims released in this Agreement.

Nothing in this Settlement Agreement may be construed to require any of the Federal Parties to obligate or pay funds, or in any other way take any action in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law. Notwithstanding this provision, the Federal Parties will make all reasonable efforts to obtain the resources necessary to carry out the terms of this Agreement and to have the necessary funds allocated.

VIII. INTERPRETATION, CONSTRUCTION, SEVERABILITY, THIRD-PARTY RIGHTS AND WAIVER

A. **Interpretation, Construction and Severability.** If any provision of this Agreement requires interpretation or construction, the Parties agree that this Agreement will be interpreted or construed without any presumption that the provisions of this Agreement are to be strictly construed against the Party which itself, or through its agents, prepared the Agreement; it being agreed that the Parties and their respective counsel, if any, and other agents have fully and equally participated in the preparation, negotiation, review and approval of all provisions of this Agreement. Any provision of this Agreement that is held to be invalid or unenforceable is severable unless severance would be inequitable to one or more of the Parties.

B. **Third-Party Rights Not Created.** Nothing in this Agreement is intended to create any substantive, procedural or other rights in or benefits for any person not a party to this Agreement. This includes any right to sue for enforcement based upon any claim as a third-party beneficiary.

C. **No Waiver**. Except as otherwise agreed herein, this Agreement does not waive any applicable statutory or administrative prerequisites to challenging any final agency decision.

IX. GOVERNING LAW, DISPUTE RESOLUTION

The Parties agree that this Agreement will be construed and enforced in accordance with the laws of the United States and the State of Nevada. Each Party further agrees that it will not bring any action to enforce or interpret this Agreement except in the Federal District Court or on appeal to a Federal Appellate Court. The Parties consent to the exclusive jurisdiction of such courts for these purposes. If any dispute arises between the Parties arising out of, or relating to this Agreement or the interpretation or enforcement thereof, or a dispute dealing with the enforcement or implementation of this Agreement ("Dispute"), the Parties agree that they will first attempt to resolve the Dispute through direct negotiations. If such efforts to resolve the Dispute through negotiations fail, the Parties agree to mediate the Dispute with the Parties sharing the mediation costs equally. The Parties will jointly select a mediator. If a Party refuses to participate or the mediation does not produce a prompt resolution, the Dispute will be resolved in the Federal District Court.

X. EXECUTION

A. **Counterparts.** This Agreement may be executed in two or more counterparts, all of which shall, upon execution and delivery of identical counterparts by all Parties, comprise a single Agreement. The Parties will accept facsimile signatures as original signatures. Each Party will promptly provide the other Parties with original signatures after execution.

B. **When Binding**. The Parties recognize that decisions whether to execute this Agreement are made individually by the Parties. As a result, this Agreement will be binding on the Governmental Parties when signed by all of their representatives as

delineated below. Regarding John Carpenter, this Agreement is binding as to him when (1) he signs the Agreement; and (2) the Governmental Parties sign the Agreement.

Executed this _____ day of _________, 2001.

JOHN C. CARPENTER
Date: April 11, 01

ELKO COUNTY, NEVADA
BY AND THROUGH:

NOLAN LLOYD
Chairperson
Date: 4-9-01

ATTEST:

KAREN DREDGE
Elko County Clerk
Date: 4-9-01

STATE OF NEVADA
BY AND THROUGH:

____
ALLEN BIAGGI
Administrator, Nevada Division of Environmental Protection

Date: ______________

UNITED STATES OF AMERICA
BY AND THROUGH:

____
JACK BLACKWELL
United States Forest Service
Date: ______________

____
MICHAEL J. SPEAR
United States Fish & Wildlife Service
Date: ______________

____
Assistant Administrator for Enforcement, U.S. Environmental Protection Agency

Date: ______________

Acting Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice

Date: 3-26-01

KATHRYN E. LANDRETH
United States Attorney
District of Nevada

Date: 4/05/01

delineated below. Regarding John Carpenter, this Agreement is binding as to him when (1) he signs the Agreement; and (2) the Governmental Parties sign the Agreement.

Executed this _____ day of _________, 2001.

UNITED STATES OF AMERICA
BY AND THROUGH:

____
JOHN C. CARPENTER
Date:_______________

Jack A. Blackwell
JACK BLACKWELL
United States Forest Service
Date: 3/30/01

ELKO COUNTY, NEVADA
BY AND THROUGH:

____
NOLAN LLOYD
Chairperson

Date:_______________

ATTEST:

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KAREN DREDGE
Elko County Clerk

Date:_______________

____
MICHAEL J. SPEAR
United States Fish & Wildlife Service
Date: _______________

____

Assistant Administrator for Enforcement, U.S. Environmental Protection Agency

Date:_______________

____

Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice

Date: _______________

STATE OF NEVADA
BY AND THROUGH:

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ALLEN BIAGGI
Administrator, Nevada Division of Environmental Protection

Date: _______________

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KATHRYN E. LANDRETH
United States Attorney
District of Nevada

Date:_______________

delineated below. Regarding John Carpenter, this Agreement is binding as to him when (1) he signs the Agreement; and (2) the Governmental Parties sign the Agreement.

Executed this _____ day of _________, 2001.

UNITED STATES OF AMERICA
BY AND THROUGH:

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JOHN C. CARPENTER
Date:________________

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JACK BLACKWELL
United States Forest Service
Date:________________

ELKO COUNTY, NEVADA
BY AND THROUGH:

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MICHAEL J. SPEAR
United States Fish & Wildlife Service
Date: 3/28/01

____
NOLAN LLOYD
Chairperson

Date:________________

ATTEST:

____
Assistant Administrator for
Enforcement, U.S. Environmental
Protection Agency

Date:________________

____
KAREN DREDGE
Elko County Clerk

Date:________________

____
Assistant Attorney General,
Environment and Natural Resources
Division, U.S. Department of Justice

Date: ________________

STATE OF NEVADA
BY AND THROUGH:

____
ALLEN BIAGGI
Administrator, Nevada Division
of Environmental Protection

Date: ________________

____
KATHRYN E. LANDRETH
United States Attorney
District of Nevada

Date:________________

B. When Binding. The Parties recognize that decisions whether to execute this Agreement are made individually by the Parties. As a result, this Agreement will be binding on the Governmental Parties when signed by all of their representatives as

delineated below. Regarding John Carpenter, this Agreement is binding as to him when (1) he signs the Agreement; and (2) the Governmental Parties sign the Agreement.

Executed this _____ day of __________, 2001.

JOHN C. CARPENTER
Date: April 11, 01

ELKO COUNTY, NEVADA
BY AND THROUGH:

NOLAN LLOYD
Chairperson
Date: 4-9-01

ATTEST:

Carol Fosmo, Deputy
KAREN DREDGE
Elko County Clerk
Date: 4-9-01

STATE OF NEVADA
BY AND THROUGH:

____
ALLEN BIAGGI
Administrator, Nevada Division of Environmental Protection
Date: ____________________

UNITED STATES OF AMERICA
BY AND THROUGH:

____
JACK BLACKWELL
United States Forest Service
Date:____________________

____
MICHAEL J. SPEAR
United States Fish & Wildlife Service
Date: ____________________

LAURA YOSHII
Acting Regional Administrator,
U.S. Environmental Protection Agency,
Region IX

SLYVIA K. LOWRANCE
Acting Assistant Administrator,
Office of Enforcement and Compliance Assurance,
U.S. Environmental Protection Agency
Date: MAR 30 2001

____
Assistant Attorney General,
Environment and Natural Resources Division, U.S. Department of Justice
Date: ____________________

KATHRYN E. LANDRETH
United States Attorney
District of Nevada
Date: 4/13/01

EXHIBIT A

EXHIBIT A

Right of way DESCRIPTION

FOR

SOUTH CANYON ROAD

The right of way for the South Canyon Road is for an existing single-lane road with turnouts that provides access to National Forest System lands and is more specifically described as follows:

> Beginning at the southerly boundary of the right of way for the existing road commonly known as County Road 748, located in the SW 1/4 of Sec. 28, T. 46 N., R. 58 E. MDM, thence generally in a southerly direction along the bottom of the South Canyon following the existing road bed through parts of Secs. 28 and 33 of T. 46 N., R. 58 E., and Secs. 3 and 10 of T. 45 N., R. 58 E., running for a distance of approximately 2.4 miles, more or less, and terminating at the Snowslide Gulch trailhead in Sec. 10. The width of said right of way shall be sufficient to accommodate the running surface of the existing road and turnouts, plus cut and fill slopes and back slopes necessary to maintain the running surface and turnouts.

The general location of the South Canyon Road is depicted on the attached map.

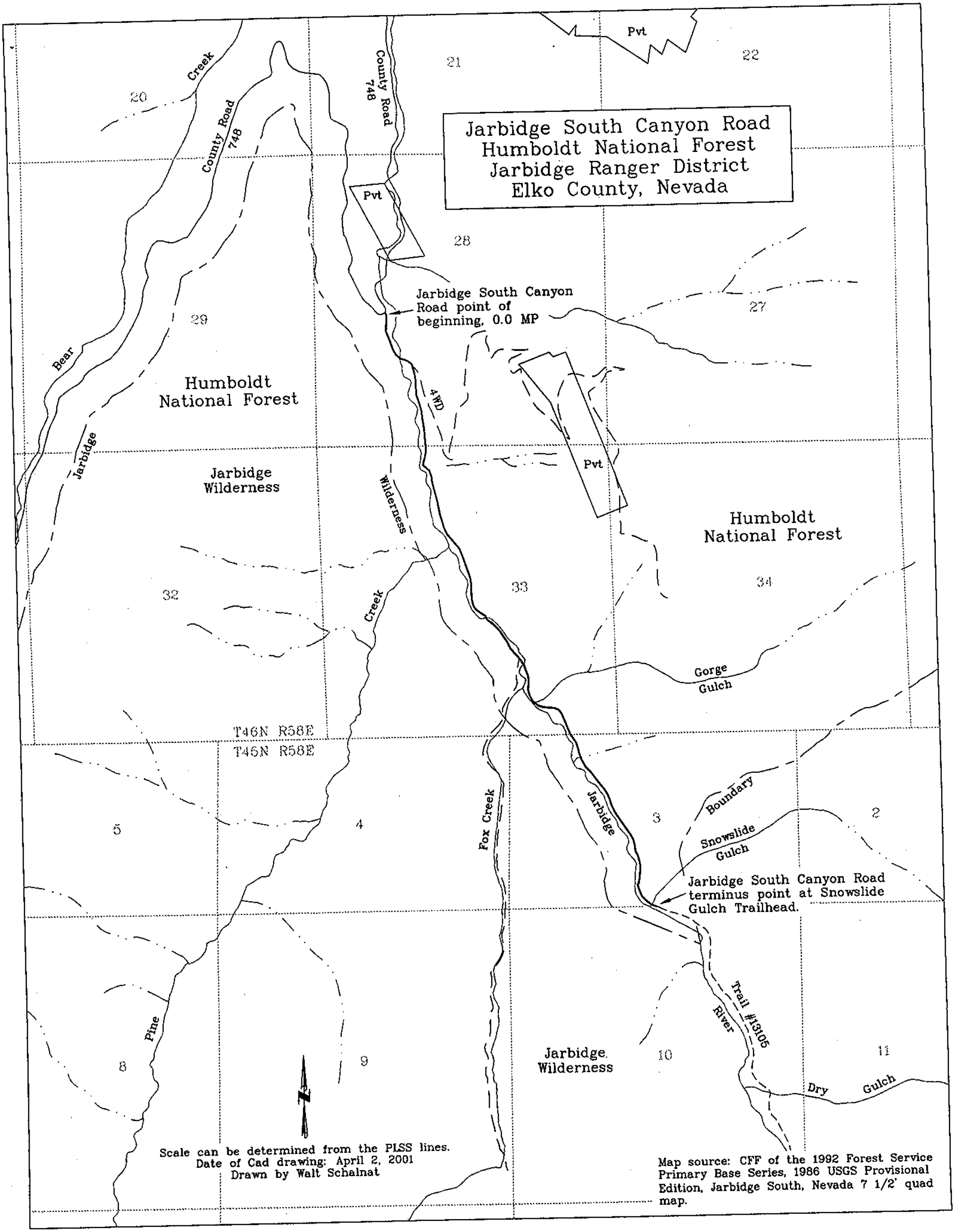
Jarbidge South Canyon Road
Humboldt National Forest
Jarbidge Ranger District
Elko County, Nevada
Pvt
20
21
22
28
27
29
32
33
34
Creek
Bear
County Road 748
Humboldt National Forest
Jarbidge
Jarbidge Wilderness
Wilderness
Creek
4WD
Pvt
Jarbidge South Canyon Road point of beginning, 0.0 MP
Gorge Gulch
T46N R58E
T45N R58E
5
4
3
2
Fox Creek
Jarbidge
Boundary
Snowslide Gulch
Jarbidge South Canyon Road terminus point at Snowslide Gulch Trailhead.
Trail #3105
River
Pine
8
9
10
11
Jarbidge Wilderness
Dry Gulch
Scale can be determined from the PLSS lines.
Date of Cad drawing: April 2, 2001
Drawn by Walt Schalnat
Map source: CFF of the 1992 Forest Service Primary Base Series, 1986 USGS Provisional Edition, Jarbidge South, Nevada 7 1/2' quad map.

EXHIBIT B

PROPOSED STIPULATION AND ORDER

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, v. John C. CARPENTER, individually and as Agent for the Citizens United for South Canyon Road; O. Q. JOHNSON, individually; Grant GERBER, individually; and ELKO COUNTY, Nevada, a political subdivision of the STATE of NEVADA. Defendants.	No. CV-N-00547-DWH (RAM)

STIPULATION AND ORDER

It is hereby STIPULATED by and between Plaintiff, UNITED STATES OF AMERICA, by and through the United States Attorney for the District of Nevada, and Defendants, John C. CARPENTER and ELKO COUNTY, Nevada, a political subdivision of the State of Nevada, by and through the Chairperson of the Elko County Commission (the foregoing referred to individually as "Party" or collectively as "Parties"), as follows:

1. The Parties have entered into a Settlement Agreement, a true and correct executed copy of which is attached hereto at Exhibit 1. The Settlement Agreement is incorporated by reference as though fully set forth herein.

2. The Settlement Agreement creates certain continuing rights in and obligations of the Parties. To give effect to these continuing rights and obligations, the Parties agree to the following.

DISMISSAL OF CLAIMS AGAINST JOHN CARPENTER

3. In order to avoid the uncertainty and expense of litigation, and in consideration of the promises and obligations contained within the Settlement Agreement, the United States agrees to release and dismiss with prejudice its claims against John Carpenter and John Carpenter agrees to release the United States from any civil claims he might have in connection with the United States' allegations and claims against him.

DISMISSAL AND RELEASE OF CLAIMS BY AND AGAINST ELKO COUNTY

4. The United States and Elko County agree to dismiss with prejudice and release their respective claims as follows:

a. In July 1998, Elko County used earthmoving equipment to begin the process of reopening the South Canyon Road in and around the area known as the South Canyon Road near Jarbidge, Nevada ("Activities").

b. Elko County engaged in the Activities without the benefit of obtaining permits from the United States and its agencies authorizing the Activities.

c. The United States believes and claims that the Activities alleged above support causes of action against Elko County for common law trespass and violations of the federal Clean Water Act. It further believes and claims that its causes of action entitle the United States to money damages, a penalty and an injunction against Elko County.

d. In response to the Activities described above, the United States commissioned a private contractor to do certain work in the same area in November and December, 1998. The United States contends that the work was necessary to restore the area in accordance with federal rules and federal law.

e. Elko County counterclaims that it owns an R.S. 2477 right of way on the South Canyon Road and maintains that it properly engaged in the Activities within the scope of an R.S. 2477 right of way and within its sovereign powers to protect the general public. Elko County contends that the United States' actions described paragraph (d), above, improperly interfered with its RS 2477 right of way.

f. In order to avoid the uncertainty and expense of litigation, and in consideration of the promises and obligations contained within the Settlement Agreement, the United States agrees to dismiss with prejudice and release its claims against Elko County for common law trespass and violations of the federal Clean Water Act arising from the Activities of July 1998, and Elko County agrees to dismiss with prejudice its counterclaim against the United States and to release the United States from any civil claims it might have in connection with the actions taken by the United States as outlined in paragraph (d), above.

EFFECT OF DISMISSAL AND RELEASE

5. Nothing in this Stipulation constitutes an admission by any Party, or waives or discharges any claims or defenses of any party except for those expressly addressed herein and in the attached Settlement Agreement.

6. Nothing in this Stipulation affects in any way any claims or causes of action the United States, Elko County or John Carpenter has or may have arising out of the terms and conditions of the Settlement Agreement, including a claim for breach of the Settlement Agreement. The Parties expressly reserve the right to enforce the terms and conditions of the Settlement Agreement.

7. Nothing in this Stipulation constitutes an agreement by the United States concerning the characterization of the amounts paid or contributed by Elko County

under the Settlement Agreement for purposes of any proceeding under Title 26 of the Internal Revenue Code.

NO THIRD-PARTY RIGHTS CREATED

8. Nothing contained in this Stipulation is intended to create any substantive, procedural, or other rights in any person, group, or individual not a party to this Stipulation.

CONTINUING JURISDICTION

9. The Parties agree to the continuing jurisdiction of this Court over this Action for all purposes, including the entry, from time to time, of such Orders by this

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Court in furtherance of its jurisdiction or to enforce the Parties' rights and obligations under the terms and conditions of the Settlement Agreement and this Stipulation.

IT IS SO AGREED:

John C. CARPENTER
Defendant

Dated: April 11, 01

ELKO COUNTY
By and Through:

Nolan Lloyd
Chairperson, Elko County Commission

Dated: 4-9-01

Attest:
Carol Tosma, Deputy
Karen Dredge
Elko County Clerk

Dated: 4-9-01

UNITED STATES OF AMERICA

KATHRYN E. LANDRETH
United States Attorney

By: Kathryn E. Landreth

IT IS SO ORDERED:

United States District Judge

Dated: 4/23/01

EXHIBIT 2

Each Party understands, acknowledges and agrees that the negotiation, execution, and performance of this Agreement shall not constitute, or be construed as, an admission of any liability or wrongdoing by any Party, nor shall the terms hereof have any value as legal precedent in any other case.

The Shovel Brigade and Demar Dahl agree that Nevada State law and Elko County ordinances provide that County authorization is required prior to doing work on any Elko County Road.

The Shovel Brigade and Demar Dahl will not engage in any work on the South Canyon Road or on National Forest System lands in the South Canyon without written authorization from Elko County; a copy of any such authorization will be delivered to the Forest Service prior to starting work. Elko County will review any request for authorization in accordance with the terms of the settlement agreement between Elko County and the United States.

Nothing in this Agreement shall be construed to limit the United States' authority to manage federally owned land or natural resources in accordance with federal laws.

The United States will dismiss its amended complaint in United States v. Shovel Brigade, et al., Civil Action No. CV-N-00-0356-DWH-RAM. All parties will bear their own costs and attorneys fees.

This Agreement is contingent upon the execution of the Settlement Agreement between the United States and Elko County. If that Settlement Agreement is not executed, this Agreement is void.